

SUPREME COURT OF INDIA

Karnataka Power Transmission Corporation Limited

Vs.

C Nagaraju

C.A.No.7279 of 2019

(L.Nageswara Rao and Hemant Gupta,JJ.,)

16.09.2019

JUDGMENT

L.Nageswara Rao,J.,

SLP (C)No.25909 of 2013

1. Leave granted.

2. The judgment of the High Court by which the order of dismissal of Respondent No.1 from the service was set aside is the subject matter of this Appeal. Respondent No.1 was appointed as a Meter Reader-cum-Clerk in the Karnataka Power Transmission Corporation Limited (KPTCL) in the year 1974. He was promoted as a Junior Engineer in the year 1997. On 21.06.2003, Additional Registrar of Enquiries-I, Karnataka Lokayukta, Bangalore framed a charge against the Respondent which is as follows:

"Charge:

That you DBE Sri. C. Nagaraju, while working as Junior Engineer (Elect.) at KEB, VV-1 (O&M) South Zone, Vidyananyapuram Circle, Mysore during the year 1998, one Sri. K.Chandrasekhar, Class II Electrical Contractor, Resident of Vidyananyapuram, Mysore, (hereinafter called as 'Complainant) had approached you for obtaining electrical power supply to the house and shop of his customer Smt. Savithamma, on 14-5-1998, and you demanded a sum of Rs. 1,250/- as illegal gratification, and on 16-5-1998 you once again demanded and accepted illegal gratification of Rs.750/- as advance amount, from the complainant for doing the said work of giving electrical power supply, and thereby you being a public servant failed to maintain absolute integrity and devotion to duty and did an act which was unbecoming of a Government servant and thereby you have committed an act of misconduct as enumerated under Rule 3(1)(i) & (iii) of K.E.B. Employees Service (Conduct) Regulation Rules, 1988."

3. The Respondent submitted his explanation to the charge. After conducting an inquiry, Additional Registrar of Enquiries-I, Karnataka Lokayukta, who was nominated as the Inquiry Officer, held that the charge against Respondent No.1 was proved. The Lokayukta examined the inquiry report and approved the findings of the Inquiry Officer. Having regard to the serious misconduct committed by Respondent No.1, the Lokayukta imposed the penalty of dismissal from service under Clause VIII of Regulation No.9 of Karnataka Electricity Board Employees (Classification, Discipline, Control and Appeal) Regulations, 1987.

4. The final notice was issued by the Appellant seeking an explanation from Respondent No.1 as to why the report of the Inquiry Officer should not be accepted. The reply submitted by Respondent No.1 was considered, and by an order dated 23.03.2007, Respondent No.1 was dismissed from service. The said order was affirmed by the Appellant Authority on 24.06.2008. Aggrieved by the order of dismissal from service, Respondent No.1 filed a writ petition in the High Court of Karnataka which was allowed by a learned single Judge by a judgment dated 08.09.2011. The Writ Appeal filed by the Appellant was dismissed by the Division Bench. Dissatisfied with the judgment of the High Court, the Appellant is before this Court.

5. It is relevant to note that Respondent No.1 was tried by the Court of Special Judge, Mysore (hereinafter referred to as "the Criminal Court") for committing offences under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 ("the PC Act"). He was acquitted by the Criminal Court as the prosecution witnesses turned hostile and did not support the case of the prosecution.

6. The learned single Judge of the High Court allowed the Writ Petition relying upon the judgments of this Court in *Captain M. Paul Anthony v. Bharat Gold Mines Ltd¹*. and *G.M. Tank v. State of Gujarat²*. It was held that the charges in the departmental inquiry and the criminal case are the same and Respondent No.1 ought not to have been dismissed from service after he was found not guilty by the Criminal Court. The Division Bench upheld the judgment of the learned single Judge by observing that an order of dismissal from service could not have been passed once the Respondent was honourably acquitted by the Criminal Court.

7. The learned counsel appearing for the Appellant submitted that the charges framed against Respondent No.1 in the Criminal Court and the Departmental Inquiries were different. He submitted that the complainant resiled from his statement and turned hostile before the Criminal Court. He further submitted that the evidence which was the basis of the order of dismissal was different from the evidence before the Criminal Court. By relying upon the judgments of this Court, the learned counsel emphasized that an acquittal by a Criminal Court does not bar a departmental proceeding. According to him, the standard of proof in a criminal trial is different from what is required for a departmental proceeding. Strict rules of evidence are followed in criminal proceedings whereas preponderance of probabilities is what is taken into consideration in a departmental inquiry. Reliance was placed by the learned counsel for the Appellant on the judgments of

this Court in *Depot Manager A.P. State Road Transport Corporation v. Mohd. Yousuf Miya³ and Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Ltd⁴*, Haldia.

8. The learned counsel for Respondent No.1 justified the judgments of the High Court by arguing that an order of dismissal cannot be passed by the Appellant after he was honourably acquitted by the Criminal Court. He stated that the essence of the charge in the criminal trial and the departmental inquiry is the same. He supported the judgment of the High Court by submitting that the Departmental Authorities were bound by the judgment of the Criminal Court. He urged that there is no truth in the allegation of demand and acceptance of illegal gratification against Respondent No.1. He further submitted that the evidence adduced in the departmental inquiry is not sufficient for warranting the imposition of the penalty of dismissal from service.

9. Mr. Chandrasekhar who was an electrical contractor submitted a complaint in which it was stated that he made an application for an electrical connection in favour of his client, Mrs. Savithri. He alleged in the complaint that Respondent No.1 demanded a bribe of Rs.1250/- for giving the electricity connection. After negotiation, the amount of bribe was reduced to Rs.750/-. Unwilling to pay the illegal gratification, Mr. Chandrasekhar lodged a complaint before the Lokayukta Police on 15.05.1998. A case was registered under Sections 7, 13(1)(d) read with Section 13(2) of the PC Act. A trap was laid and Respondent No.1 was caught accepting the amount of Rs.750/- from Mr. Chandrasekhar. The right hand of Respondent No.1 was washed in Sodium Carbonate solution and it turned into pink colour. The complainant appeared before the Inquiry Officer and deposed against Respondent No.1 about demand and acceptance of illegal gratification. That apart, the complainant Mr. Chandrasekhar also gave details about the trap laid down by the Lokayukta Police. Mr. Santhosh Kumar, Deputy Superintendent of Police who conducted the trap was examined as PW3. After taking into account the evidence, the Inquiry Officer held Respondent No.1 guilty of the charge. Considering the gravity of misconduct in demanding and accepting illegal gratification, the Disciplinary Authority found Respondent No.1 not fit to continue in service.

10. Acquittal by a criminal court would not debar an employer from exercising the power to conduct departmental proceedings in accordance with the rules and regulations. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. In the disciplinary proceedings, the question is whether the Respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether the offences registered against him under the PC Act are established, and if established, what sentence should be imposed upon him. The standard of proof, the mode of inquiry and the rules governing inquiry and trial in both the cases are significantly distinct and different.

11. As the High Court set aside the order of dismissal on the basis of the judgments of this Court in *Captain M. Paul Anthony (supra)* and *G.M. Tank (supra)*, it is necessary to examine whether the said judgments are applicable to the facts of this case. Simultaneous

continuance of departmental proceedings and proceedings in a criminal case on the same set of facts was the point considered by this Court in Captain M. Paul Anthony's case (supra). This Court was of the opinion that departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar. However, it is desirable to stay departmental inquiry till conclusion of the criminal case if the departmental proceedings and criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact. On the facts of the said case, it was found that the criminal case and the departmental proceedings were based on identical set of facts and the evidence before the Criminal Court and the departmental inquiry was the same. Further, in the said case the departmental inquiry was conducted ex parte. In such circumstances, this Court held that the ex parte departmental proceedings cannot be permitted to stand in view of the acquittal of the delinquent by the Criminal Court on the same set of facts and evidence. The said judgment is not applicable to the facts of this case. In the present case, the prosecution witnesses turned hostile in the criminal trial against Respondent No.1. He was acquitted by the Criminal Court on the ground that the prosecution could not produce any credible evidence to prove the charge. On the other hand, the complainant and the other witnesses appeared before the Inquiry Officer and deposed against Respondent No.1. The evidence available in the Departmental Inquiry is completely different from that led by the prosecution in criminal trial.

12. Reliance was placed by the High Court on a judgment of this Court in G.M. Tank (supra) whereby the Writ Petition filed by Respondent No.1 was allowed. In the said case, the delinquent officer was charged for an offence punishable under Section 5(1)(e) read with Section 5(2) of the PC Act, 1988. He was honourably acquitted by the criminal court as the prosecution failed to prove the charge. Thereafter, a Departmental Inquiry was conducted and he was dismissed from service. The order of dismissal was upheld by the High Court. In the Appeal filed by the delinquent officer, this Court was of the opinion that the departmental proceedings and criminal case were based on identical and similar set of facts. The evidence before the Criminal Court and the departmental proceedings being exactly the same, this Court held that the acquittal of the employee by a Criminal Court has to be given due weight by the Disciplinary Authority. On the basis that the evidence in both the criminal trial and Departmental Inquiry are the same, the order of dismissal of the Appellant therein was set aside. As stated earlier, the facts of this case are entirely different. The acquittal of Respondent No.1 was due to non-availability of any evidence before the Criminal Court. The order of dismissal was on the basis of a report of the Inquiry Officer before whom there was ample evidence against Respondent No.1.

13. In *Krishnakali Tea Estate v. Akhil Bhartiya Chah Mazdoor Sangh*⁵ this Court was concerned with the validity of the termination of the services of workmen after acquittal by the Criminal Court. Dealing with a situation similar to the one in this case, where the acquittal was due to lack of evidence before criminal court and sufficient evidence was available before the Labour Court, this Court was of the opinion that the judgment in Captain M. Paul Anthony's case (supra) cannot come to the rescue of the workmen.

14. Having considered the submissions made on behalf of the Appellant and the Respondent No.1, we are of the view that interference with the order of dismissal by the High Court was unwarranted. It is settled law that the acquittal by a Criminal Court does not preclude a Departmental Inquiry against the delinquent officer. The Disciplinary Authority is not bound by the judgment of the Criminal Court if the evidence that is produced in the Departmental Inquiry is different from that produced during the criminal trial. The object of a Departmental Inquiry is to find out whether the delinquent is guilty of misconduct under the conduct rules for the purpose of determining whether he should be continued in service. The standard of proof in a Departmental Inquiry is not strictly based on the rules of evidence. The order of dismissal which is based on the evidence before the Inquiry Officer in the disciplinary proceedings, which is different from the evidence available to the Criminal Court, is justified and needed no interference by the High Court.

15. For the aforementioned reasons, the Appeal is allowed.

Judgment Referred.

¹(1999) 3 SCC 0679

²(2006) 5 SCC 0446

³(1997) 2 SCC 0699

⁴(2005) 7 SCC 0764

⁵(2004) 8 SCC 0200